19 47.

File No. Ab K II/47
Part. II

L. & I. DEPARTMENT

P. BRANCH

Subject:—

Rules and Notifications

[illegible] Forms

[illegible] Act, 1818.

II

9— B

IV

C O N T E N T S.

Legal Department File Abk II/47 Part II

Sr. No.	Compilation No.	Subject.	Pages.
		The Bombay Abkari Act, 1878.	
1.	U.R. to R.D.No.11640 dated 4.12.47	Sec. 6 - Notification under	1-4-
2.	U.R. to Adv. Gen No. 7465 dt. 21.7.47	Granting exemption from duty in respect of Indian Manufactured Foreign Liquor	5-10
	U.R. to R.D.No.7840 dated 29.7.47		
3.	U.R. to R.D.No.11711 dated 6.12.47	Sec. 12 - Notification under	11-14
4.	G.R.R.D.No.6337/45 dated 5.12.47	Denatured spirit - Limit of possession of	15-22 (not copied)
5.	U.R. to R.D.No.9831 dated 10.10.47	Sec 30 - Draft Rules under -	23-70 (pp.23-66 not to be copied)

Nair/-

11/5

K.S.R.

11/5

Office of the R.L.A.

Subject to the following remarks, the draft notifications at page 61 and the forms of application for permit for possession of denatured spirit and of the draft permit at pages 63-66 ante, as amended, are in order: -

(a) In the draft notifications at page 61, a proviso has been inserted that ~~xxx~~ a permit of pass shall be issued by the ~~Abkari~~ Abkari Officer if the possession or transport of denatured spirit is incidental to its import into or export from the Province of Bombay, across the customs frontier. R.D. should see therefore whether the proviso is in order.

(b) In the form of the draft application for permit at p.63, in item No.177 for the words "kerosene permit" the words "kerosene card" have been substituted, in accordance with the concluding portion of para 2 of the Press Note at p.87.

(c) Condition 3 of the draft permit has been amended so as to cast upon the permit holder the duty of getting the reverse thereof duly filled in by the retail ~~denaturedx~~ spirit licensee.

P.M. Lael

Sd/- 4.12.
Remembrancer of Legal Affairs.

U.R. to R.D. No.11640, dated the 4th December 1947.

Nair/-

NOTIFICATION.

Revenue Department,
Bombay Castle, October 1947.

The Bombay Abkari Act 1878

No.4655/45:- In excercise of the powers conferred by section 6 of the Bombay Abkari Act, 1878 (Bom. V of 1878), the Government of Bombay is pleased to amend Schedule A appended to Government Notification, in the Revenue Department, No.3562/39(e), dated 20th January 1943, as follows, namely:-

After Serial No.11 in column 1 of the said Schedule A, the following new entry shall be inserted, namely:-

1.	2.	3.	4.
"11-A.	Supervisors, Nira Duty.	The limits of their respective jurisdictions.	Powers under sections 36, 37 and 45(a). "

By order of the Governer of Bombay,

V.N.Sardesai,
Secretary to Government.

To be published in Part IV-B of the Bombay Government Gazette to be returned with 20 copies of the notification.

Secretary to Government.

Office of the R.L.A.

Statement of the Case.

In 1944, the office of the Governor's Secretary inquired of the Revenue Department as to whether the Government of Bombay was empowered under the existing law to exempt from payment of excise duty liquor required for consumption by the Governor General and Governors, their household and guests. The Remembrancer of Legal Affairs, who was consulted advised as follows, namely:-

"Under section 19 of the Bombay Abkari Act, 1878, duties are leviable either generally or for any specified local area on any excisable article which is imported, exported, transported or manufactured in accordance with the provisions of the said Act. The proviso to that section exempts from the duties any article which has been imported into British India and was liable on such importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878. There is no provision in the Bombay Abkari Act, 1878, for granting exemption from exercise duties in respect of Indian manufactured foreign liquor. In the absence, therefore, of any provision in respect of exemption from excise duties, analogous to paragraph 9 of the Government of India (Governor's Allowances and Privileges) Order, 1936, it does not seem legally feasible to exempt from payment of excise duty Indian manufactured foreign liquor required by the Governor General and Governors for consumption of their household and guests."

This opinion was followed in R.L.A.'s subsequent opinion No.3091, dated the 25th April 1944.

The Advocate General is requested to state whether

he agrees with the said opinions.

Id./PML
Remembrancer of Legal Affairs.

U.R. to the Advocate General, Bombay, No.7465 dated the 21st July 1947.

Nr./-

No.38 of 1947.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 24th July 1947.

U.R. to the Advocate General, Bombay, -
No. 7465 dated the 21st July 1947.

Subject: - Excise Duty.

OPINION.

There is no provision in the Abkari Act, 1878 for granting exemption from Duty in respect of Indian Manufactured Foreign Liquor. It would not therefore, be legal to exempt any such liquor required by the Governor General or Governor for consumption of their household and guests.

If it is desired to grant such exemption the power must be taken by Legislation. I suggest that Section 35(2) may be amended by adding to the Rule making power, a power enabling Government to grant exemption from Excise Duty.

Sd. C.K. Daphtary
Advocate General.

Nair/-

Office of the H.L.A.

A copy of the Advocate General's opinion No.38, dated the 24th July 1947, together with the Statement of the Case prepared for him, is forwarded herewith.

Id. D.V.V.
Remembrancer of Legal Affairs.

U.R. to R.D. No.7840 dated the 29th July 197.

Nair/-

Office of the R.L.A-

The draft notification at page 47 ante as slightly amended is in order.

Id./BDP6.12.
for Remembrancer of Legal Affairs.

U.R. to R.D., No.11711, dated the 6th December 1947.

Nair/-

NOTIFICATION.
Revenue Department,
Bombay Castle, 1947.

Bombay Akbari Act, 1878.

No.3404/39(a). - In exercise of the powers conferred by section 12 of the Bombay Abkari Act, 1878 (Bom. V of 1878), and all other powers enabling it in this behalf the Government of Bombay is pleased to amend Government Notification in the Revenue Department No. 3404/39(b) dated the 10th July 1941, as follows, namely:-

In the schedule appended to the said notification, for entry (3) the following entry shall be substituted, namely:-

(3) Ordinary Denatured spirit, that is, denatured spirit consisting of 99 per cent alcohol, half per cent light caoutchoucine and half per cent of crude pyridine.	Any area in the Province.	One-sixth of an imperial gallon or one reputed quart bottle.	One-sixth of an imperial gallon or one reputed quart bottle.	One Pint in the case of import and one reputed quart bottle in the case of export.

By order of the Governor of Bombay,

V.N.Sardesai,
Secretary to Government.

To be published in Part IV-B of the Bombay Government Gazette to be returned with 6 copies of the notification.

Secretary to Government.

Office of the R.L.A.

A revised draft of the rules is sent herewith.

2. The following remarks are made:-

R.D.rule 2.- The Bombay Abkari Act, 1878, defines tapping' and 'nira' and therefore the definition of these erms [illegible] in the Rules have been omitted as being unnecessary oreover the definition of 'tapping' as given in the rule s not in accordance with the definition of that term in he Act.

R.D.rule 3.- This rule is not necessary in view of the evised rule 3 which states the purposes for which an pplication for a license may be made under the rules. The orms of application and licensee are appended to the rules.

R.D. rules 3 and 5 contemplate the grant of license or the manufacture of gul. Presumably these rules follow n this respect the C.P. Sweet Teddy (Nira) Rules but the .P. and Berar Prohibition Act, 1938, under which these rules re made provides specifically for the grant of a license for he manufacture of Jaggery from sweet teddy. (see section 31 f the C.P.Act). There is no provision in the Bombay bkari Act corresponding to the provision contained in the .P.Act, for the grant of a license for the manufacture f gul from nira and therefore any provision in the rules. ade under the Bombay Abkari Act for the grant of such licenense ould be ultra-vires. The reference in the R.D. rules to the license for the manufacture of gul has, therefore, been mitted from the revised rules.

R.D.rule 5.- The provision in R.D. rule 5 that a person shall undertake to use the nira for the purpose specified in the application has been inserted in the form of application in stead of [illegible] in the rule.

R.D. draft rule 6.- Section 30 of the Act provides for the grant of a license on payment of such fees as the provincial Government may direct in rules. Under this pro vision it would be necessary to prescribe the fees in the rules themselves. The provision in the R.D. draft rule that the fees for a license shall be at such other rate as

may be fixed by Government from time to time has therefore been omitted from the revised draft rule 6.

R.D.rule 7.- This rule provides that a tree- tax shall not be levied on trees licensed to be tapped under the rules. Under section 20 of the Bombay Abkari Act, 1878, for every toddy-producing tree from which toddy is drawn there shall, if the Provincial Government so direct, be levied for any period during which such tree is tapped or licensed to be tapped such duty as the Provincial Government from time to time directs. The duty or what is known as the 'tree tax' shall be levied under this section if the Provincial Government so directs. If the intention is that the trees licensed to be tapped under the proposed rules should escape duty it would be necessary for Government to issue orders cancelling their previous directions, if any, issued under the section in so far as they would be applicable to the trees licensed to be tapped under the rules. If no such directions have been issued nothing need be done since liability to pay the duty under the section arises on the issue of a direction thereunder. In any case a rule prohibiting the levy of such duty cannot be properly made under section 20 of the Act.

R.D.rule 19.- This corresponds to revised rule 17. The revised rule provides that the licensee shall besides the cancellation or sus-pension of his license under section 32 be liable to any penalty under the Act or any other law for the time being in force.

License form N-I - R.D. conditions 7 and 8 have been revised on the lines of similar conditions in other license forms already supplied to R.D. Corcspgnding conditions in other license forms, have been similarly revised.

License Form N-II.- Condition 1 in this form fixes the basis on which the Collector shall determine the number of trees which the licensee shall be permitted to tap. This is more or less in the nature of an executive instruction which the Collector has to follow and cannot be appropriately inserted as a condition of the license. It has, therefore, been emitted from the revised form.

License form No - III - Condition 10 has been revised so as to make the intention quite clear. R.D. should verify if the revised condition is in accordance with it's intention.

Condition 16 has been split up into two conditions. R.D. condition 16 prohibits any partnership after the grant of the license. It is for the consideration of R.D. whether a provision should not be made for the recognition of partnership on the application by the licensee and the Collector thereupon agreeing to enter the name of the licensee's partner in the license.

Before issue, R.D. should see that the proposed rules do not overlap or conflict with the rules, if any, made by the Commissioner under section 35A(a)(iii) of the Bombay Abkari Act, 1878.

Para 8 of R.D. note - The R.L.A. would suggest that the speediest procedure would be to settle the final draft at a conference, in case the draft now submitted is for any reason found unsuitable.

Id. PML 8.10.
Remembrancer of Legal Affairs.

U.R. to R.D.No.9831, dated the 10th October 1947.

Nair/-